



**MULTISTATE TAX COMMISSION**

**MINUTES of**  
**Uniformity Subcommittee on Income & Franchise Tax Meeting**  
**Monday, July 22, 2013**  
**8:30 a.m. Pacific Time**

**I. Welcome and Introductions**

Robynn Wilson, Chair of the Uniformity Subcommittee on Income & Franchise Tax, (AK) opened the meeting. The following persons were in attendance:

Name	Affiliation	Name	Affiliation
Craig Banks Kelley Gillikin Chris Sherlock Curtis Stewart	AL	Gene Walborn Lee Baerlocher	MT
		Lennie Collins	NC
		Matt Peyerl	ND
		Emily Thompson Donnita Wald	
Robynn Wilson Walter Anger Tom Atchley Phillip Horwitz	AS	Rebecca Abbo	NM
	AR	Julie Anderson	OR
	CO	Gary Humphrey	
Phyllis Abe William Deeley Madelaina Lai Ted Shiraishi	HI	Frank Hales Tim Jennrich	UT WA
		Private Sector	
		Greg Turner	COST
Richard Jackson Randy Tilley Phil Skinner	ID	Karen Boucher Amy Hamilton Sabir Kapoor	Deloitte Tax State Tax Notes Sutherland
		MTC Staff	
Richard Cram Jennifer Hays Michael Fatale Stewart Binke Wood Miller	KS	Roxanne Bland	Bruce Fort
	KY Leg.	Lila Disque	Sheldon Laskin
	MA	Elliott Dubin	Shirley Sicilian
	MI		
	MO		

**II. Approval of Minutes of In-Person Meeting, March 5, 2013**

There were no comments or additions to the minutes. Phil Horwitz (CO) moved to approve the minutes. The motion passed unanimously by voice vote.

**III. Public Comment Period**

There were no comments.

**IV. Reports and Updates**

**a. Federal Issues Affecting State Taxation**

**i. 1. H.R. 1129, Mobile Workforce State Income Tax Simplification Act of 2013**

Roxanne Bland gave the report. Ms. Bland informed the members of the subcommittee that this bill was marked up and sent on to the Senate Finance Committee. This bill states that an employee must be in the state 20 days before the company has a requirement to withhold that states income tax from the employee. Professional athletes and entertainers do not have this protection. Ms. Bland said that she expected the Business Activity Tax Simplification Act of 2011 (BATSA) to be introduced later this summer.

**b. Report on Commission Action on Uniformity Projects**

**i. Report on Hearing Officer's Report on Recommended Amendments to Compact Art. IV [UDITPA]**

Shirley Sicilian provided an update regarding recommended amendments to Compact Art. IV. The public hearing was held on March 27 of this year, with Richard Pomp as Hearing Officer. The Hearing Officer received a number comments, and he is working on his report.

Ms. Sicilian gave a summary of the Committee proposal and the comments received from the public

**ii. Final Project Report for the Model Statute for Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax**

Mr. Laskin presented the report. The project in question has been ongoing since 2008. It went to public hearing in 2011 and was sent back by the exec committee to see if concerns raised by the insurance industry could be addressed. Eventually the revised proposal went back to the executive committee, where after discussion they voted to finalize the project with a final report written for submission to the Executive Committee. No further action will be taken on the report; it is to serve as an historical document summarizing the work on the project.

**V. Project to Amend MTC Financial Apportionment Rule**

**a. Report of Work Group**

Lennie Collins (NC) presented the report. After the last meeting, some minor amendments were made to the report. The Committee was asked for further update: in the last meeting, they were asked to look into whether to retain loans in the property factor, and if so how to apportion them. Mr. Collins reported that the state members were not necessarily opposed to including loans in the property factor but

they (the state members) are opposed to using the (S)INAA method to apportion the loans. Mr. Collins further noted that there was some opposition from some state members to including any intangible assets in the apportionment formula. A suggestion was made that the date of which the model becomes effective should be delayed until a substantial number of states adopt this model statute. This suggestion was rejected.

**b. Public Comment**

Karen Boucher, Deloitte, states that industry believes there is a means to clarify the SINAA while retaining it in its main form, although it appears states would like to move from a production-based focus for the loans. Industry wants to make sure states realize that if the loans go out of the property factor, this moves apportionment to a market-based approach. They also worry they will be unevenly taxed as the states proceed with adoption, and request a delayed effective date or one that depends on a certain number of states implementing.

**c. Committee Discussion**

Phil Horwitz (CO) responded to Ms. Boucher's comments. Although she suggested industry believes some form of SINAA is still viable, the proposals they have come forward with have been evaluated by the states and found not to be an improvement on the current process. States' view is that it is ultimately too subjective and reflects back to something that cannot be established on audit. Elimination of loans should not move the property factor into a market-based direction, since it seems more like a return to the traditional approach of the sales factor being a market representation (loan interest and fees are in the receipts factor) and the property factor moving back to physical production location. It is more reasonable to view it as a return to traditional notions of apportionment.

Matt Peyerl (ND) reiterated Mr. Horwitz' assertions. Michael Fatale (MA) stated that attributing loans to tangible, real property, and payroll is not the same as excluding loans from the apportionment formula. Phil Skinner (ID) noted that some industry members of the WG are not opposed to excluding loans from the apportionment formula. Ms. Boucher countered that putting loans in the apportionment formula is a tradeoff for using market sourcing of receipts rather than more traditional methods. Ms. Boucher opined further by saying that (S)INAA shows where banks actually perform certain functions related to the generation of loans.

Regarding the delayed effective date requested by industry, Dee Wald (ND) asked whether there had been any other regulations that have had a delayed effective date, as is being requested in the present situation. Ms. Sicilian said if it is built into the model, it becomes a model reciprocal statute. The only one she is aware of is the model mobile workforce. If adoption of the *model* is delayed, that will not work.

After further debate on the effect of the market-based approach, Mr. Horwitz moved the Subcommittee recommend to the workgroup that it move forward with the approach of the property factor being real and tangible personal property and

eliminating any aspect of SINAA from the property factor. The Subcommittee voted on Mr. Horwitz' motion: the motion passed with 12 in favor, none against, 4 abstentions.

Mr. Horwitz then moved that the working group consider a trigger mechanism built into the rule on a basis of time, number of states adopting, or both. Ms. Wilson noted it might be difficult, legislatively speaking. Randy Tilley, ID, agreed there was value in settling a date certain, but the legislature would have issues as far as their sovereign ability to pass the legislation if it was contingent on enactment by other states. He feels a specific date would be more palatable to legislators. Mr. Horwitz agreed, but stated this does not affect the motion.

The Subcommittee voted on Mr. Horwitz' motion: the motion passed with 7 in favor, 2 against, 5 abstentions.

## **VI. Process Improvements Discussion**

### **a. Status Report on Uniformity Website Improvements**

Ms. Sicilian provided the report. There are two issues: website improvements and process improvements. The website improvement discussion is an extension of the presentation given in St. Louis. The staff has looked into implementation and met with software developers. The Commission has entered into a contract with the developers to build the desired website. The improved website is not just for Uniformity, but will be a Commission-wide enhancement. Mr. Matson stated the bulk of the work should be done by September, with a project completion date of October 15.

### **b. Uniformity Process Strategic Planning Workgroup Recommendations**

The Workgroup was assigned to look at Commission goals and obstacles, select a few, and recommend them to the Subcommittee. Gary Humphrey (OR) presented the workgroup's findings. The group selected goal area 2 (value to states and stakeholders), sub-issue (b): projects take too long to complete. It also chose goal area 3, sub-issue (a): the public is in the habit of opposing MTC projects. It identified deliverables, and outlined a plan to address each one and from whom to get information. The group also talked a little about the questions they would want to ask. They requested approval of the recommendation, and asked for volunteers to be involved in the groups.

### **c. Public Comment**

There were no comments at this time.

### **d. Committee Discussion**

Mr. Humphrey clarified the first issue (timing) would be the first priority. Ms. Wald felt it would be beneficial to interview the stakeholders and the public to identify the issues they want to focus on. Mr. Humphrey stated the goal was to ask questions *after* picking a specific obstacle in order to simplify the process.

Mr. Tilley wanted to get an idea of the end goal before choosing how to make the process work -- this would implicate goal area 1, part (a). After some debate on the nature of the goals and how to prioritize them, Ms. Sicilian clarified that the goal areas were created by the Strategic Planning Committee.

Mr. Horwitz moved to have the subcommittee recommend to the strategic planning committee that the subcommittee appoint a work group to proceed on 1(a): why are the uniformity projects not widely adopted, get answers to the questions surrounding it, and translate those to usable data for further steps in the project. That way, anything that has been missed on outlining the project can be addressed. The motion passed with 12 votes in favor, 0 against.

Ms. Wilson then solicited volunteers for the work group. Mr. Humphrey expressed interest, as did Mr. Binke and Mr. Skinner (pending approval from their respective divisions). Mr. Jackson gave his approval for Mr. Skinner to participate.

**VII. New Business**

There was no new business.

**VIII. Adjourn**

The meeting adjourned at 11:48 AM pacific time.